

KAY FINK

IBLA 84-168

Decided June 28, 1984

Appeal from a decision of the Colorado State Office, Bureau of Land Management, denying a petition for reinstatement of oil and gas lease C-31554 Acq.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:
Termination

A petition for reinstatement pursuant to 30 U.S.C. § 188(c) (1982) of an oil and gas lease which has terminated by operation of law for failure to make timely payment of the annual rental will be denied where the petition is filed more than 15 days after receipt of notification of termination of the lease.

APPEARANCES: Kay Fink, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Kay Fink appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated November 10, 1983, which denied appellant's petition for reinstatement of oil and gas lease C-31554 Acq. because the petition was not filed within 15 days after receipt of the notice of termination as required by 43 CFR 3108.2-1(c)(1)(iii). The lease terminated by operation of law for failure to pay the annual rental on or before the anniversary date of September 1, 1983. 1/

The lease was originally issued for a 10-year period effective September 1, 1981. Subsequent to receipt of the late rental payment, BLM issued a notice of termination which it sent to appellant's address of record in Hollywood, Florida. The return receipt card shows that it was signed by one Ruby Clark on September 28, 1983, in Bloomfield Hills, Michigan.

Appellant submitted a petition for reinstatement, received by BLM on October 19, 1983. Appellant stated in the petition that it took "some time"

1/ The record discloses that the rental payment was received by BLM on Sept. 15, 1983. The check for the rental was dated Sept. 12, 1983. The envelope in which the payment was mailed to BLM was postmarked Sept. 13, 1983.

before she received BLM's notice because the notice was first sent to her home in Florida, then forwarded to Michigan. ^{2/} She explained that she was in Chicago at the time which caused the delay in sending her petition.

On November 10, 1983, BLM issued its decision denying appellant's petition for reinstatement because the petition was not filed within the time required by regulation.

In her statement of reasons for appeal, appellant asserts that when she is away from home the mail is not acted upon until she returns; that she has two residences, one in Florida and one in Michigan; that BLM's notice (apparently referring to the notice of rental due) was sent to Florida, and redirected to Michigan; and that she was out of town and did not return to her residence until September 12, 1983, thus, causing a delay in the receipt of the notice.

[1] The Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that upon the failure of a lessee to pay rental on or before the anniversary date of an oil and gas lease on which there is no well capable of production of oil or gas in paying quantities, the lease terminates automatically by operation of law. A lease so terminated may be reinstated where the rental is paid within 20 days of the anniversary date and it is shown that the failure to pay by the anniversary date was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1982). The regulation implementing this statutory provision for reinstatement, 43 CFR 3108.2-1(c), provides in pertinent part as follows:

(c)(1) Except as hereinafter provided, the authorized officer may reinstate a lease which is terminated for failure to pay on or before the anniversary date the full amount of rental due, provided that:

(i) Such rental was paid or tendered within 20 days after the anniversary date; and

(ii) It is shown to the satisfaction of the authorized officer that the failure to timely submit the full amount of rental due was either justified or not due to a lack of reasonable diligence on the part of the lessee; and

(iii) A petition for reinstatement together with a non-refundable filing fee of \$25 and the required rental, including any back rental which has accrued from the date of the termination of the lease, is filed with the proper BLM office within 15 days after receipt of Notice of Termination of Lease due to late payment of rental. The Notice of Termination shall be sent only if the rental is actually paid.

^{2/} It appears that the "notice" referred to is the notice of lease termination rather than the notice of rental due routinely sent to lessees in advance of the anniversary date of the lease. We note that the record discloses that the latter notice was also sent to lessee's address of record in Florida whereas the envelope containing the rental check was postmarked in Michigan.

The return receipt card in the case file discloses that the notice of termination was received on September 28, 1983, in Bloomfield Hills, Michigan. ^{3/} Therefore, appellant's petition for reinstatement must have been received by BLM no later than Thursday, October 13, 1983, to meet the 15-day time requirement in 43 CFR 3108.2-1(c)(1)(iii). Appellant's petition for reinstatement was postmarked October 17, 1983, and received by BLM on October 19, 1983. A decision rejecting a petition for reinstatement will generally be affirmed where the petition is not filed within the time limit set by the relevant regulation. See Michael Morrisroe, Jr., 56 IBLA 49 (1981). The petition for reinstatement was properly denied.

Even if appellant's petition was considered on its merits, it would be denied because appellant has not shown that her failure to make timely payment was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1982); 43 CFR 3108.2-1(c)(1)(ii). Reasonable diligence has been consistently held to be lacking where a rental payment is not mailed (as evidenced by the postmark on the envelope) until after the anniversary date of the lease. See, e.g., James M. Chudnow, 62 IBLA 13 (1982). Appellant's remittance was postmarked September 13, 1983, which was after the anniversary date.

Neither could we find that appellant's late rental payment was justifiable. The Board has previously stated that an "[u]ntimely payment of the annual rental may be justifiable for purposes of reinstatement if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease." James M. Chudnow, *supra* at 15. Applying this standard, the Board, on numerous occasions, has held that travel, either for business or pleasure, does not ordinarily prevent a diligent individual from making payment or arranging for others to make payment in his or her absence. Anthony F. Hovey, 79 IBLA 148 (1984); James M. Chudnow, *supra*. Appellant's claim that she had two residences and that she was on a trip to Chicago is not sufficient to show that her delay in paying rental was justifiable. See Donald L. Darrow, 69 IBLA 62 (1982); Arnold L. Gilberg, 57 IBLA 46 (1981). Further, it is well established that delay in receipt of the rental billing notice will not justify a late payment. See Melbourne Concept Profit Sharing Trust, 46 IBLA 87, 91 (1980).

Reinstatement under section 401 of the Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, 2462, 30 U.S.C. §§ 188(d)-188(i) (1982), which authorizes reinstatement in the absence of due diligence under certain stringent conditions, including payment of rental for noncompetitive leases of at least \$5 per acre (30 U.S.C. § 188(e)(2)), is not before the Board in this appeal. BLM properly advised appellant in the notice of termination of this option, but the record contains neither a petition for reinstatement filed under section 401 nor any adjudication thereof which may be reviewed. ^{4/}

^{3/} Appellant cannot assert prejudice arising from forwarding of the notice from Florida to Michigan as BLM did not consider the time period to have commenced until the return receipt for the notice was signed at appellant's Michigan address.

^{4/} The notice of termination sent out by BLM advised appellant of the requirement, for purposes of reinstatement under section 401, of payment of

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Franklin D. Arness
Administrative Judge

fn. 4 (continued)

increased rental of \$5 per acre, as well as certain administrative costs authorized by statute, within 60 days of receipt of the notice. There is no evidence in the record that any payments have been tendered other than the \$25 filing fee required for a petition for reinstatement under 30 U.S.C. § 188(c) (1982).

